

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1459

ORIGINAL

~~74-8109~~

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**United States Court of Appeals
FOR THE SECOND CIRCUIT**

UNITED STATES OF AMERICA,

Appellee,

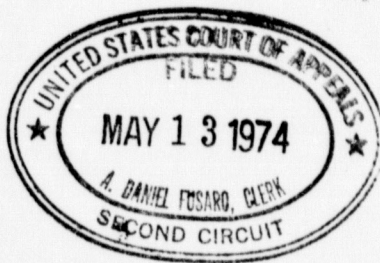
—against—

SAMUEL SANCHEZ,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**APPENDIX TO BRIEF FOR
APPELLANT SANCHEZ**



GUSTAVE H. NEWMAN
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PAGINATION AS IN ORIGINAL COPY

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THE UNITED STATES	:	For Defendant:
	:	Henry Schulman
vs.	:	(Schulman & Laifer)
	:	16 Court St., Bklyn, NY.
SAMUEL SANCHEZ	:	UL 5-8855

Mail theft.

<u>DATE</u>	<u>PROCEEDING</u>
8-21-72	Before RAYFIEL, J. - Indictment filed.
8-23-72	Before NEAHER, J. - Case called - Govt moves for an increase in bail - deft by counsel moves for a reduction in bail - adjourned to 8-24-72.
8-23-72	Notice of Appearance filed.
8-24-72	Before NEAHER, J. - Case called - Deft & counsel Stephen Laifer present - deft arraigned and enters plea of not guilty - hearing held to reduce bail - Hearing concluded - Bail reduced to \$5,000, Surety.
8-25-72	File 72 M 1631 inserted into CR file.
9-7-72	Magistrate's file 72 M 1657 inserted into CR. file.
1-17-73	Notice of Readiness for Trial filed.
4-10-73	Before Neaheer, J. - Case called - Hearing on suppression begun - Hearing held and concluded - Decision Reserved - All papers by 4-17-73 - set down for disposition 4-18-73.
4-17-73	Before NEAHER, J. - Case called - deft & counsel G. Newman present - adjd to April 23, 1973.
4-23-73	Before NEAHER, J. - Case called - Adjd to 5/2/73 on consent of U.S. Atty.
5-2-73	Before NEAHER, J. - Case called - Deft and Counsel present - Motion to suppress Denied - To set date for trial on 5/30/73.
7-2-73	Before NEAHER, J. - Case called - adjd to 7/6/73.
7-6-73	Before NEAHER, J. - Case called - Case set down for trial on 7/20/73.
7-20-73	Before NEAHER, J. - Case called - Hearing ordered and begun - Decision reserved - Hearing held and concluded.
9-10-73	Stenographers Transcript date April 10, 1973 filed.
1-17-74	Stenographers transcript dated July 20, 1973 filed.
2-13-74	Before NEAHER, J. - Case called - deft & counsel G. Newman present - Court finds the deft guilty as charged - Decision filed - bail contd. pending appeal - sentence adjd without date.
2-13-74	By NEAHER, J. - Memorandum of Decision and Order filed the court is convinced beyond a reasonable doubt that the deft is found guilty as charged.

DATE

PROCEEDING

3-22-74	Before NEAHER, J. - Case called - Deft and counsel present - Deft sentenced to imprisonment for a period of 18 months - Execution of sentence is suspended and deft is placed on probation for 3 years.
3-22-74	Judgment and Order of Probation filed - certified copies to Probation
3-29-74	Notice of Appeal filed.
3-29-74	Docket entries and duplicate of Notice mailed to the Court of Appeals.
4-10-74	Order received from the Court of Appeals filed that the record be docketed on or before April 18, 1974, etc.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

(NOTED IN INK: See
72 M 116)

UNITED STATES OF AMERICA :
:
v. :
:
SAMMY SANCHEZ :

U.S. Magistrate's
Docket No. 72 M
Case No. 120
SEARCH WARRANT

TO: Any Special Agent of the FBI

Affidavit having been made before me by _____
that he has reason to believe that on the person of _____
in the _____ District of _____ there is now being con-
cealed certain property, namely slips of paper, books of accounts,
records of money paid out and collected, betting slips, balance
sheets, adding machines and other paraphernalia which are
evidence of a policy betting business which is operated in
violation of Article 225, Section 225.0 through 225.40, New York
State Revised Penal Laws, and also thereby in violation of
Sections 1955, 371 and 2 of Title 18, United States Code and
as I am satisfied that there is probable cause to believe that
the property so described is being concealed on the person above
described and that the foregoing grounds for application for
issuance of the search warrant exist.

YOU ARE HEREBY COMMANDED to search forthwith the
person named for the property specified, serving this warrant and
making the search in the daytime and if the property be found
there to seize it, leaving a copy of this warrant and a receipt
for the property taken, and prepare a written inventory of the
property seized and return this warrant and bring the property
before me within ten days of this date, as required by law.

Dated this 21 day of Jan., 1972.

U.S. MAGISTRATE

RETURN

I received the attached search warrant 1/24/72 and have executed it as follows:

On 1/24/72 at 4:40 o'clock P.M., I searched the person described in the warrant and

I left a copy of the warrant with SAMUEL SANCHEZ together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

SEE ATTACHED SHEET OF PAPER.

This inventory was made in the present of SHAWN T. RAFFERTY, WILLIAM BOOTH and JOSEPH COYNE and SAMUEL SANCHEZ.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this 28 day of January, 1972.

U.S. MAGISTRATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----x

UNITED STATES OF AMERICA

-v-

Affidavit in Support of
Search Warrants

JAMES GENNA;
FRANK LUPO;
ALBERT SABELLA;
TOM ABBAT;
SAMMY SANCHEZ; 72 M 120
JOHN DOE #1;
RAYMOND CENCI;
GEORGE RAMIREZ;
FREDERICK MIGLIARESE;
JOHN DOE #2;
JOHN DOE #3;
JOHN DOE #4;
JOHN DOE #5;

A person known only as ABBIE;
A person known only as KNOBBY;

The Canopy Lounge
5612 Clarendon Road
Brooklyn, New York

A yellow mercury bearing NY. license LM 1068;

-----x

MICHAEL FITZGERALD, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, duly appointed according to law and acting as such.

Your affiant has probable cause to believe that JAMES GENNA, FRANK LUPO, ALBERT SABELLA, TOM ABBAT, SAMMY SANCHEZ, JOHN DOE #1, ROBERT CENCI, GEORGE RAMIREZ, FREDERICK MIGLIARESE, JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JOHN DOE #5, a person known only as ABBIE, and a person known only as KNOBBY are committing offenses in violation of Article 225, sections 225.0 through 225.40, New York State Revised Penal Laws, and also thereby in violation of Section 1955, 371, and 2 of Title 18, United States Code.

Your affiant also has probable cause to believe that evidence of the aforesaid violations will be found on the bodies of the aforementioned persons, within the premises of The Canopy Lounge, 5612 Clarendon Road, Brooklyn, New York, and within the following automobiles; a brown Oldsmobile bearing N.Y. license 6Q 7037; a green and white Oldsmobile bearing N.Y. license YJ 9820; a brown Buick bearing N.Y. license 7116 GB and a Yellow Mercury bearing N.Y. license LM 1068.

The reasons for your affiant's belief, and the grounds of his probable cause, are as follows:

INFORMANT NO. 1

1. An Informant, herein after referred to as Informant No. 1, has provided the F.B.I. with information concerning gambling and the commission of crimes in the New York area for over three years. In each instance, independent investigation by the F.B.I. has failed to prove him inaccurate. Informant No. 1's data have lead to more than four arrests by the F.B.I., at least one arrest by another Federal agency, and the recovery in excess of \$50,000 of stolen property.

2. On November 8, 1971 Informant No. 1 advised an F.B.I. agent that JAMES GENNA and FRANK LUPO were partners in a policy betting business operated from the premises of The Five O'Clock Lounge, 5505 Church Avenue, Brooklyn. The Informant stated that on November 4, November 5 and November 8, 1971 JAMES GENNA and FRANK LUPO met runners in the policy betting business inside the Five O'Clock Lounge. After meeting with the runners in the public section of the Five O'Clock Lounge, JAMES GENNA and

FRANK LUPO, sometimes individually and sometimes together, would escort the runners into the kitchen. Also, Informant No. 1 on November 8, 1971 stated that within the previous five days he had observed AL SABELLA take paper bags containing records of the policy betting business from the cloak room of the Five O'Clock Lounge, and then hand them to a person known as ABBIE. ABBIE then took the paper bags outside the Five O'Clock Lounge.

The basis of the Informants assertions stated in paragraph no. 2 is admissions made in his presence by the persons mentioned in paragraph 2 and his own observations within the premises mentioned in paragraph 2.

3. Informant No. 1, on December 20, 1971, informed the F.B.I. agent that he had observed FRANK LUPO and JAMES GENNA and also ALBERT SABELLA conversing with runners regarding the work runners had brought into the Five O'Clock Lounge in excess of ten occasions from October 1, 1971 to December 20, 1971.

4. Informant No. 1 on November 8, 1971 informed the F.B.I. that TOM ABBOT is a controller of the policy betting business. The informant stated he knew this fact from admissions made in his presence by FRANK LUPO, ALBERT SABELLA, and JAMES GENNA and also from his own observations of TOM ABBOT handling records of the policy betting business.

5. The informant on October 28, 1971, informed the F.B.I. that SAMMY SANCHEZ was a controller in the policy betting business. The informant's statement was based upon his observations within the previous two days. In particular, within the previous two days the informant had heard FRANK LUPO say to SAMMY SANCHEZ, "I don't want these guys hanging around the corner. I want them in here early tomorrow."

6. On December 27, 1971 Informant No. 1 stated that JOHN DOE #1 was a participant in the policy betting business. In particular, on November 28, 1971 the Informant stated that he had seen JOHN DOE #1 removing records of the policy betting business from within the Five O'Clock Lounge. Informant No. 1 has identified the person whose photograph is attached as Exhibit "6" as the person referred to herein as JOHN DOE #1.

7. On November 8, 1971 Informant No. 1 informed the F.B.I. that ROBERT CENCI was a runner in the policy betting business. The informant similarly stated that GEORGE RAMIREZ was a runner in the policy betting business. The informant stated on November 8, 1971 that he had seen both ROBERT CENCI and GEORGE RAMIREZ enter the Five O'Clock Lounge, confer briefly with either AL SABELLA or JAMES GENNA, and then withdraw from the public area of the Five O'Clock Lounge to the kitchen with either SABELLA or GENNA. The Informant also stated that he had observed in excess of ten such meetings between RAMIREZ and CENCI and either SABELLA or GENNA from October 1, 1971.

8. During the last week of October, 1971, Informant No. 1 also advised the F.B.I. that he had observed SAMMY SANCHEZ arrive at the Five O'Clock Lounge in a yellow Mercury automobile bearing New York license LM 1068 in excess of ten times.

9. On January 14, 1972, Informant No. 1 advised an F.B.I. agent that FREDERICK MIGLIARESE is a controller in the policy betting business. The informant also stated that he had observed MIGLIARESE within The Canopy Lounge, 5612 Clarendon Road, Brooklyn, New York, in late December and on both January 13 and 14, 1972. The informant also stated that he had observed MIGLIARESE

arrive in a blue Chevrolet bearing New York license KJ 8904. On each occasion, he has observed FREDERICK MIGLIARESE enter The Canopy Lounge, confer briefly with AL SABELLA in the public area of the Lounge, and then withdraw with SABELLA to a rear room of the Lounge.

10. Informant No. 1, on January 14, 1972, stated that JOHN DOE #2, whose photograph is annexed as Exhibit No. "10" is also a controller in the policy betting business. The Informant stated that he knows, on the basis of his own observations, that JOHN DOE #2 is a controller on Pier 3 in Brooklyn. Informant No. 1 also stated that he had seen JOHN DOE #2 inside the Canopy Lounge on January 13 and 14, 1972. On each occasion, JOHN DOE #2 entered the Canopy Lounge and went immediately to the back room. The Informant has identified the photograph attached as Exhibit "10" as a photograph of JOHN DOE #2.

11. On January 14, 1972, Informant No. 1 told an F.B.I. agent that he had seen JOHN DOE #3 within the Canopy Lounge on both January 13 and January 14, 1972. On each occasion, the Informant had observed JOHN DOE #3 withdraw to the back room of the Canopy Lounge with AL SABELLA. The Informant also advised the F.B.I. agent that he had seen JOHN DOE #3 within the Five O'Clock Lounge in excess of ten times between October 1 and December 31, 1971. The Informant, on January 14, 1972, also stated that he had observed JOHN DOE #4 and JOHN DOE #5 enter the Canopy Lounge on January 13 and 14, 1972, and withdraw to the back room with ALBERT SABELLA on each occasion. Similarly the Informant stated that he had previously observed both JOHN DOE #4 and JOHN DOE #5

inside the Five O'Clock Lounge on several occasions between October 1 and December 31, 1971. Informant No. 1 has identified Exhibits "11", "12" and "13" as photographs of JOHN DOE #3, JOHN DOE #4 and JOHN DOE #5 respectively.

12. Informant No. 1 informed an F.B.I. agent on January 14, 1972 that he had observed a person known to him only as "KNOBBY" within the Canopy Lounge on both January 13 and January 14, 1972. On each occasion, "KNOBBY" entered the Canopy Lounge wearing a coat, the pockets of which were apparently filled with bulky items. "KNOBBY" went directly into the back room of the CANOPY LOUNGE with AL SABELLA on each occasion. Informant No. 1 has identified the photograph attached as Exhibit "15" as a photograph of the person known to him as "KNOBBY".

Informant No. 1, on December 22, 1971 informed an F.B.I. agent that he had seen JAMES GENNA and AL SABELLA inside the CANOPY LOUNGE on the evening of December 21, 1971, at that time, Informant No. 1 also observed FREDERICK MIGLIARESE enter the CANOPY LOUNGE and go directly to the rear with GENNA and SABELLA. Also, on December 22, 1971, Informant No. 1 informed an F.B.I. agent that on the previous evening he had observed JAMES GENNA and ALBERT SABELLA talking to JOHN DOE #2 in the CANOPY LOUNGE. Finally, on December 21, 1971, Informant No. 1 informed the F.B.I. that he had seen FRANK LUPO, JAMES GENNA and AL SABELLA in THE CANOPY LOUNGE on December 20, 1971, meeting with runners as the runners entered.

13. On January 14, 1972, Informant No. 1 informed the F.B.I. that he had seen GEORGE RAMIREZ, ROBERT CENCI, JOHN DOE #3 and JOHN DOE #4, JOHN DOE #5, and ABBIE inside the CANOPY LOUNGE on January 13, 1972.

14. Informant No. 1 admits that he is an avid gambler and bets in the policy lottery with great frequency. Also, Informant No. 1 has viewed exhibits one through fourteen and has identified them as follows:

Exhibit #1	JAMES GENNA
Exhibit #2	FRANK LUPO
Exhibit #3	ALBERT SABELLA
Exhibit #4	TOM ABBOT
Exhibit #5	SAMMY SANCHEZ
Exhibit #6	JOHN DOE #1
Exhibit #7	ROBERT CENCI
Exhibit #8	GEORGE RAMIREZ
Exhibit #9	FREDERICK MIGLIARESE
Exhibit #10	JOHN DOE #2
Exhibit #11	JOHN DOE #3
Exhibit #12	JOHN DOE #4
Exhibit #13	JOHN DOE #5
Exhibit #14	A person known only as ABBIE
Exhibit #15	A person known only as KNOBBY

INFORMANT NO. 2

15. Informant No. 2, has been an informant for the F.B.I. for one year. His information has resulted in the apprehension of two fugitives.

16. Informant No. 2 on October 6, 1971 informed the F.B.I. that between July 28, 1971 and October 6, 1971 he had observed FRANK LUPA and JAMES GENNA meeting with runners within the Five O'Clock Lounge. He also stated that during the period from July to October, 1971, he had observed SAMMY SANCHEZ enter the Five O'Clock Lounge carrying envelopes, meet briefly with GENNA and LUPO in the public area of the Five O'Clock Lounge, and then immediately accompany GENNA and LUPO into the back room. On January 18, 1972, Informant No. 2 also informed the F.B.I. that within the previous five days he had observed LUPO, GENNA, AL SABELLA and SAMMY SANCHEZ meeting in the CANOPY LOUNGE. On that occasion, he heard SAMMY SANCHEZ remark, "We're over here now." Informant No. 2 then observed SAMMY SANCHEZ hand the barmaid in the CANOPY LOUNGE a brown paper bag.

INFORMANT NO. 3

17. Informant No. 3 has been an informant for the F.B.I. in excess of three years. His data have resulted in four arrests by the F.B.I., and an arrest by another federal agency in 1971, and in the recovery of \$50,000 worth of stolen property. He is an avid gambler. On November 16, 1971, Informant No. 3 advised the F.B.I. agent, on the basis of his personal observations, that FRANK LUPO, JAMES GENNA and SAMMY SANCHEZ, were involved in a policy betting business. The Informant also stated that he had seen SAMMY SANCHEZ carrying paper bags, and knew SANCHEZ to be a controller in the policy betting business. Finally, the Informant also stated that he personally had placed bets with GENNA.

SURVEILLANCES

18. On January 13, 1972, an F.B.I. agent observed two unknown persons arrive in a Mercury automobile and parked in front of the CANOPY LOUNGE. The automobile remained there approximately six minutes. The agents then observed SAMMY SANCHEZ come out of the CANOPY LOUNGE and walk to the automobile where SAMMY SANCHEZ received an envelope from the hand of the driver. Thereupon, the driver drove away in the Mercury automobile with his companion, and SAMMY SANCHEZ walked down Clarendon Road.

19. On January 14, 1972, an F.B.I. agent observed FREDERICK MIGLIARESE enter the CANOPY LOUNGE at approximately 3:41 P.M. At 3:58 P.M. the F.B.I. agent observed AL SABELLA leave the CANOPY LOUNGE, cross the street to a coffee shop, and then return to the CANOPY LOUNGE at 4:02 P.M. At 4:07 P.M. the F.B.I. agent observed JOHN DOE #2 enter the CANOPY LOUNGE. At 4:40 P.M. the F.B.I. agent observed AL SABELLA exit the CANOPY LOUNGE, to an automobile, and then return to the CANOPY LOUNGE. At approximately 4:45 P.M. an F.B.I. agent observed SAMMY SANCHEZ exit an automobile and enter the CANOPY LOUNGE. At 4:49 P.M. the F.B.I. agent observed SAMMY SANCHEZ leave the CANOPY LOUNGE and depart.

20. The CANOPY LOUNGE consists of a large public room, a kitchen, and another private room. Also, there are ladies' and gentlemen's rest rooms entering onto the public room. Within the public room are a bar and a cigarette machine. A diagram of the CANOPY LOUNGE's floor plan is attached as Exhibit 16.

ADDITIONAL DATA

21. Informant No. 1 advised an F.B.I. agent on January 20, 1972 that he had observed JAMES GENNA, SAMMY SANCHEZ, AL SABELLA, KNOBBY and JOHN DOE #2 within the CANOPY LOUNGE on that day.

22. Your affiant has been a special agent of the F.B.I. for seven years and has investigated gambling cases since 1968. On the basis of his own experience and that of brother agents, he knows that the policy betting business involves a complicated, sophisticated system of records and the transfer of records whereby notation of bets are transferred to those controlling the business. In a policy operation, bettors place their wages with persons known as "collectors". Collectors, in turn, daily transfer their records of wagers to "runners", who travel regular routes the same as routemen in legitimate businesses. The runners, in turn, deliver their records (received from collectors) to "controllers", who meet the runners at appointed times every day in specific semi-public places. Among such places are barbershops, coffee shops and bars. Controllers, in turn, routinely transport their records to a secret location known as the "bank". In the bank, a complete set of books and records reflecting each better's wins and losses is kept. On a specific day each week, called "settle up day", the policy lottery operation collects its accounts receivable and pays its accounts oweable, (as determined by the records in the bank).

23. The prime records, which are made by the collector and transferred by him through the runner and controller to the

bank, are usually small pieces of paper on which the collector records the code name of an individual better and the precise wager made by that better. Because of the great volume of paper which is generated in a single day's betting activity and which must be transferred to the banker, it is the custom of runners and controllers to transport the individual slips in paper bags, envelopes, and other innocuous containers.

WHEREFORE, your affiant requests that warrants issue authorizing the searches of the bodies of JAMES GENNA, FRANK LUPO, ALBERT SABELLA, TOM ABBOT, SAMMY SANCHEZ, JOHN DOE #1, ROBERT CENCI, GEORGE RAMIREZ, FREDERICK MIGLIARESE, JOHN DOE #3, JOHN DOE #4, JOHN DOE #5, a person known only as ABBIE and a person known only as KNOBBY. Also, your affiant requests that a warrant issue authorizing the search of the CANOPY LOUNGE, 5612 Clarendon Road, Brooklyn, New York. And also the searches of the following automobiles: a brown Oldsmobile bearing New York license 6Q 7037; a green and white Oldsmobile bearing New York license YJ 9820; a brown Buick bearing New York license 7116 GB; and a yellow Mercury bearing New York license LM 1068. Also, your affiant requests that the aforementioned warrants authorize the seizure of books, slips of paper, paper bags, ledgers, accounting books, records of bets and paid-out's, and other paraphernalia which are evidence of a violation of Article 225, Sections 225.0 through 225.40, New York State Revised Penal Laws, and also thereby in violation of Section 1955, 371 and 2 of Title 18, United States Code.

Sworn to before me this
21 day of January, 1972

MICHAEL FITZGERALD, Special Agent
Federal Bureau of Investigation

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-v-

INDICTMENT
18 USC Section 1708

SAMUEL SANCHEZ

Defendant.

-----x

THE GRAND JURY CHARGES:

COUNT ONE

On or about January 24, 1972, within the Eastern District of New York, the defendant Samuel Sanchez unlawfully did have in his possession the following items, which had been deposited in collection boxes at the following locations on January 23, 1972, as mail, and which had been stolen, taken, embezzled and abstracted from and out of a collection box and an authorized depository for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted:

<u>ITEM</u>	<u>LOCATION OF COLLECTION BOX</u>
A Savings Book of the Dime Savings Bank, New York, Account #F 23, 070	East 13th Street and Avenue I, Bklyn, NY
A check drawn on Manufacturers Hanover Trust Company, Account #0210-0030-0028-5-22294, for \$400.00	East 13th Street and Avenue I, Bklyn, NY
A Savings Book of the Greater New York Savings Bank, Acct #262,086-2	Ocean Parkway and Avenue P Brooklyn, New York
A check drawn on the Franklin National Bank, Acct #0260-0048-044-10231-7	24th Street and Avenue K Brooklyn, New York
A check drawn on the King's Lafayette Bank, Account #0260-0371-090010396	East 23 Street and Avenue M Brooklyn, New York

ITEM

LOCATION OF COLLECTION BOX

A check drawn on the Bankers Trust
Company, Account #0210-0103-21-
41559580

Neptune Avenue and Homecrest
Avenue, Brooklyn, New York

A check drawn on the Merchants Bank
of New York, Account #0260-0679-
218853

Neptune Avenue and Homecrest
Avenue, Brooklyn, New York

A TRUE BILL

FOREMAN

ROBERT A. MORSE
UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- -X
UNITED STATES OF AMERICA : 72 CR 996
 :
-against- :
 : MEMORANDUM
SAMUEL SANCHEZ, : OF
 : DECISION
 :
Defendant. :
----- -X

APPEARANCES:

ROBERT A. MORSE, ESQ.
United States Attorney
By ROBERT G. DELGROSSO, ESQ.
Special Attorney, United
States Department of Justice

GUSTAVE NEWMAN, ESQ.
Attorney for Defendant

NEAHER, District Judge.

Defendant was indicted for possession of checks and bank passbooks knowing that they had been stolen from the mail in violation of 18 U.S.C. §1708. The case was tried before the court without a jury, the defendant having stipulated that if the government had called the payees or makers of the checks or the named parties on the bankbooks, they would testify (1) that they were the payees or makers of the respective checks or the owners of the

bankbooks;(2) that they mailed the checks or bankbooks in a "regular facility for such purposes, conducted or maintained by the United States Postal Service", and (3) that they had not given the defendant permission to receive or have the items in his possession. Defendant further stipulated that F.B.I. Agent Michael C. Fitzgerald, had he been called, would have testified that he advised defendant of his rights, according to an advice of rights form, and that defendant thereafter made the statement referred to infra p. 9. For the reasons which follow, the court finds the defendant guilty beyond a reasonable doubt.

Defendant's indictment in this case arose out of a contemporaneous investigation of gambling and policy operations which were under surveillance by agents of the Federal Bureau of Investigation. A warrant was obtained for a search of the person of the defendant and a number of other suspects, authorizing the agents to seize "paraphernalia which are evidence of a policy betting business." In the course of executing that warrant the agents seized the checks and bankbooks which led to defendant being charged with a violation of 18 U.S.C. §1708.

In view of the stipulated facts, the trial was largely concerned with issues relating to the main thrust of defendant's defense, namely, a renewed challenge¹ to the legality of the search of his person and of an automobile he had driven to the tavern where he was stopped and searched. This discussion is therefore focused on that defense, which the court finds to be untenable.

I. Legality of the Search Warrant

Defendant attacks the legality of the warrant authorizing search of his person on three grounds:

First, as to the asserted absence of probable cause for its issuance, the affidavit of F.B.I. Agent Fitzgerald supporting the warrant reveals ample probable cause. It relied on information provided by three unidentified informants. Each of these had previously supplied the government with data which had led to arrests in other cases; each had personally observed or heard the information contained in the affidavit. In addition, the affidavit states that surveillance by other members of the F.B.I. revealed activities consistent with an ongoing gambling operation. See, United States v.

Sultan, 463 F.2d 1066, 1068-69 (2 Cir. 1972); cf. United States v. Canieso, 470 F.2d 1224, 1229-31 (2 Cir. 1972).

Second, the contention that the warrant is defective because of the omission of defendant's name in its body is without merit. The warrant is plainly captioned "United States of America v. Sammy Sanchez", and hence the omission, clearly a clerical oversight, is of no significance so far as notice to or the identification of this defendant is concerned. Cf. United States v. Ventresca, 380 U.S. 102, 108 (1965); United States v. Manfredi, ____ F.2d ____, ____ (2 Cir. Nov. 23, 1973); United States v. Gomez, 42 F.R.D. 347 (S.D.N.Y. 1967).

Third, the apparent contention that the warrant was overly broad in authorizing seizure of "paraphernalia which are evidence of a policy betting business" overlooks similar language upheld in Spinelli v. United States, 382 F.2d 871, 886 (8 Cir. 1967), rev'd on other grounds, 393 U.S. 410 (1969) ("bookmaking paraphernalia"), and by implication in Marcus v. Search Warrant, 367 U.S. 717, 731 (1967), and United States v. Marti, 421 F.2d 1263, 1271 (2 Cir. 1970).

In sum, the warrant legally authorized search of defendant's person.

II. Execution of the Search Warrant

As previously noted, the warrant authorized seizure of policy betting paraphernalia. In the course of searching defendant, F.B.I. Agent Shaun T. Rafferty first found four policy slips in his pants pockets. Looking further he found concealed in defendant's right sock two bankbooks, two checks, a money order, a deposit slip and another piece of paper. The two bankbooks and one of the checks are the first three of the seven stolen items listed in the indictment. None of the items found bore defendant's name in any manner.

Defendant contends that seizure of these items was unlawful in that (1) they were not specifically identified in the warrant, and (2) there was no probable cause to believe that they were contraband or unlawfully in the possession of the defendant (Tr. July 20, 1973, p. 21). Defendant's first premise is not disputed. While his second premise is more arguable, the court believes that the seizure here was lawful.

Although it is clear after the fact that the items did not come within the terms of the warrant, there is no question that the search itself was lawful at the time it was conducted. Even objects not comprehended by a warrant may be seized pursuant to a lawful search where their possession is unlawful.² See Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971); Alderman v. United States, 394 U.S. 165, 177 n. 10 (1969); Harris v. United States, 331 U.S. 145, 155 (1947); United States v. Pacelli, 470 F.2d 67, 70-72 (2 Cir. 1972), cert. denied, 410 U.S. 983 (1973); cf. United States v. Robinson, ___ U.S. ___, 94 S. Ct. 467 (1973); Gustafson v. Florida, ___ U.S. ___, 94 S. Ct. 488 (1973). Here, moreover, the court previously accepted as highly credible the suppression hearing testimony of F.B.I. Agent Fitzgerald, who supervised the search, that the items were viewed at the time as falling within the terms of the warrant, possibly evidencing payment or security for the extension of credit connected with the policy operation under investigation. (Tr., May 2, 1973, pp. 4-5.)

Defendant also objects to the admissibility of the items seized from the automobile which was searched

immediately afterwards. First, the search of the car was clearly reasonable under the circumstances. Aware of the information contained in the warrant, corroborated by surveillance immediately prior to the search, and having found four policy slips upon defendant, the law enforcement officers had probable cause to arrest him as well as to search the vehicle in which he had arrived immediately before the search and had used to transport the slips found in his possession. Cf. United States v. Ortega, 471 F.2d 1350, 1360-61 (2 Cir. 1972), cert. denied, 411 U.S. 948 (1973); Chambers v. Maroney, 399 U.S. 42, 46-52 (1970); Chimel v. California, 395 U.S. 752, 763-64 (1969). Compare Coolidge v. New Hampshire, supra at 458-464 (1971).

Second, while it is unclear whether defendant was officially placed under arrest at the time of the search, it is apparent that the officers had effectively asserted custody over him pursuant to the search warrant, had warned him of his Miranda rights and had deprived him of his freedom of action. From a statement made by defendant it is clear that he understood this to be the case. See infra p. 9. Hence the immediate search of the nearby vehicle could well be upheld as incident to

arrest. Cf. United States v. Francolino, 367 F.2d 1013, 1016-18 (2 Cir. 1966), cert. denied, 386 U.S. 960 (1967), See Coolidge v. New Hampshire, supra at 455-58; Chambers v. Maroney, supra; Chimel v. California, supra. See also United States v. Robinson, supra; Gustafson v. Florida, supra.

Third, the vehicle was clearly subject to seizure and forfeiture under 18 U.S.C. §1955(d), which provides that "[a]ny property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States." The law enforcement officers, relying upon this provision, had probable cause to believe that the vehicle was being used in violation of §1955(a), (c). Consequently, whether or not the government is eventually entitled to forfeiture of the vehicle, it had every right to seize the vehicle and, in exercising custody over it, to search it. United States v. Francolino, supra at 1018-23; United States v. Ortega, supra; cf. Cooper v. California, 386 U.S. 58 (1967); compare United States v. Marti, supra at 1270-71 (2 Cir. 1970).

Accordingly, the court reaffirms its prior oral ruling on the suppression hearing that the items found in

the lawful search of defendant and the automobile were legally seized and were admissible at his trial.

III. Knowledge and Intent

In proof of the element of knowledge and intent, the government relied on a subsequent statement admittedly made by defendant that "If you are willing to forget about that stuff, I can give you the location of other policy banks" (Tr., July 20, 1973, pp. 5, 9). The statement was made in response to Agent Fitzgerald's remark that because stolen United States mail had been found in defendant's possession, he could receive a sentence. Defendant challenges the construction placed on the statement by the government, maintaining that it related only to policy items, not to the offense prosecuted.

While there may be some ambiguity as to whether "that stuff" related only to the policy slips or to the stolen checks and bankbooks, the statement is indicative of a consciousness of some guilt on defendant's part. There is no question that it was freely and voluntarily made following a full advice of rights, and that it did not result from coercion or submission to authority. Thus it

was relevant as probative on the issue of guilty knowledge and the court finds that such relevance outweighed any prejudice to defendant.

It is unnecessary, however, to give the statement conclusive weight in order to determine the defendant's state of mind with respect to the stolen mail. Other evidence and inferences logically flowing therefrom provide a substantial basis for a finding of guilt. Three mail items found on his person were clearly in his possession. As for the checks discovered in the automobile, it is undisputed that defendant drove and was the sole occupant of the vehicle, and that he had the keys to it even though it was not registered to him. These facts alone would present a stronger case than those relied upon by defendant.³ Compare United States v. Steward, 451 F.2d 1203, 1207 (2 Cir. 1971). Moreover, the items discovered in the vehicle were of the same type as those found on his person and most were of recent date.

Possession of property recently stolen, if not satisfactorily explained, is ordinarily a circumstance from which the trier of fact may reasonably draw the inference and find in the light of surrounding circumstances

shown by the evidence that the person in possession knew the property had been stolen. United States v. Schultz, 462 F.2d 622 (9 Cir. 1972). Cf. United States v. Coppola, 424 F.2d 991, 993-94 (2 Cir.), cert, denied, 399 U.S. 928 (1970).

Here, viewing the evidence as a whole, the court is convinced beyond a reasonable doubt that defendant was in knowing possession of the items charged.

The defendant Samuel Sanchez is found guilty as charged.

/s/ EDWARD R. NEAHER
U. S. D. J.

Dated: Brooklyn, N.Y.

F O O T N O T E S

- ¹ Prior to trial, when it was assumed the case would be tried before a jury, a suppression hearing was held to determine whether the items seized pursuant to these searches would be allowed into evidence. On May 2, 1973 the court delivered its ruling from the bench, denying the suppression motion.
- ² There is no claim or any basis for inferring that the officers obtained the search warrant as a pretext, intending to search not only in connection with the crime referred to in the warrant, but also in connection with other crimes.
- ³ Defendant's reliance on United States v. Vilhotti, 452 F.2d 1186 (2 Cir. 1971), cert. denied, 405 U.S. 1041 (1972), and United States v. Kearse, 444 F.2d 62 (2 Cir. 1971), is misplaced. While those cases held that mere presence at the time of the search is insufficient to convict a defendant of a crime involving a charge of possession, in neither case did the court bar the introduction of evidence obtained in the course of the search.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

vs.

Indictment No. 72 CR 996
NOTICE OF APPEAL

SAMUEL SANCHEZ,

Defendant.

-----x

SIRS:

PLEASE TAKE NOTICE that the above-named Defendant SAMUEL SANCHEZ hereby appeals to the Court of Appeals for the Second Circuit from a Judgment of Conviction entered the 22nd day of March, 1974 before the Honorable Edward Neaher which convicted the Defendant after a non-jury trial of violation of Title 18, U.S.C., Section 1708 and sentenced the Defendant to three (3) years' probation.

Yours, etc.

GUSTAVE H. NEWMAN
Attorney for Defendant-Appellant
522 Fifth Avenue
New York, New York 10036
Telephone: MU 2-4066

DATED: New York, New York
March , 1974

TO: Edward Boyd V
United States Attorney
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201
ATTENTION: ROBERT G. DEL GROSSO, Special Attorney

Service of ^{Two (2)} ~~three (3)~~ copies of the within
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this day of

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Attorney(s) for

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OF NEW YORK

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Therese J. Hunt
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